

Congress of the United States**Washington, DC 20515**

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March 17, 2004

The Honorable Alan Greenspan
Chairman of the Board of Governors
Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable John D. Hawke, Jr.
Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable James E. Gilleran
Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Sirs:

We are writing to submit our joint comments regarding the agencies' proposed rule published in the February 6, 2004, Federal Register to update implementation of the **Community Reinvestment Act (CRA)**. We appreciate the opportunity to comment on the agencies' proposal and respectfully request your consideration of our comments as the rule is finalized.

Small Institutions Streamlined Exam

The agencies propose to expand the number of banks and ~~thrifts that~~ qualify for examination under the streamlined CRA process. We commend the agencies for proposing this expansion as it is well known that small institutions incur a disproportionately high regulatory cost when subjected to the large retail institution exam. However, we believe the agencies must consider additional relief in this area than has been proposed.

Under current rules, only those institutions with less than \$250 million in assets being independent or affiliated with a holding company with less than \$1 billion in assets qualify for the streamlined examination process. The agencies propose to increase the asset size limitation to \$500 million and eliminate the holding company restriction:

The agencies note that raising the asset limit to \$500 million will have little material impact on the amount of total assets currently covered by the large retail institution exam, but will reduce by approximately half the number of institutions subject to such review.

Specifically, the agencies write:

“Raising the asset threshold to \$500 million...would approximately halve the number of institutions subject to the large retail institution test (to roughly 11% of all insured depository institutions), but the percentage of industry assets subject to the large retail institution test would decline only slightly, from a little more than 90% to a little less than 90%” *Federal Register*, Vol. 69, No. 25 (p. 5738)

We concur with the agencies’ determination to ensure the vast majority of industry assets remain subject to the large retail exam. However, we note that increasing the exemption amount from \$500 million in assets to \$1 billion in assets accomplishes this same purpose.

Our analysis of available information shows that as of December 31, 2003, the Federal Deposit Insurance Corporation insured 9,182 banks and thrifts representing \$9 trillion in industry assets (FDIC Quarterly Banking Profile, Fourth Quarter 2003). Of these institutions, 8,088 had total assets \$500 million or less while 8,612 had total assets of \$1 billion or less. Further, institutions with \$500 million or less in assets account for \$1.03 trillion in assets, or 11 percent of total industry assets. The data also showed that institutions with \$1 billion or less in assets account for \$1.38 trillion in assets or 15 percent of total industry assets.

Under the agencies’ proposal, approximately \$8.05 trillion in industry assets will remain under the large retail exam. If the \$1 billion threshold is adopted, approximately \$7.68 trillion will remain under the large retail exam. This is a difference of only 524 institutions and \$362 billion of industry assets.

Increasing the asset threshold for the large retail institution exam to \$1 billion would not have a significant impact on the total amount of assets nor the total number of institutions covered by the exam. Such an amendment will provide relief to an additional 524 institutions while ensuring that 85 percent of total industry assets are covered under the large retail exam. Accordingly, we strongly encourage the agencies to raise the threshold to \$1 billion.

Investment Test

The agencies propose to address concerns with regard to the investment test in two principal ways. First, by increasing the number of institutions that qualify for the streamlined CRA exam, the number of institutions subjected to the investment test will be reduced. Secondly, the agencies propose to clarify the application of the investment test through additional guidance.

The agencies noted that several commenters raised issues with regard to the investment test. Many expressed frustration that certain activities fostering community development were excluded from consideration of institutions’ CRA-related investment activities while others discussed the subjective manner in which institutions’ investments have been judged as “innovative or complex.”

Decreasing the number of institutions subjected to the investment test may decrease the number of these complaints but does **little** to correct identified problems. Likewise, providing additional guidance to institutions that **remain** captive to the subjective judgment of examiners offers **only** modest certainty to **the examination process**.

Clarifying CRA regulations on these important issues **will give** certainty to **institutions, community organizations and** units of local government with an interest in CRA qualifying activities,

Expanded definition of “community development”

The current definition of community development ignores the **myriad** development projects **that** promote **and stabilize** communities. Such activities include, but **are** not limited to the revitalization or stabilization of communities, **financing** of environmental **remediation** efforts, **financing** of wastewater **facilities, financing** of **infrastructure**, financing of **education** facilities **and financing** of other **similar** projects vital to **communities**. **In many** instances, such projects languish **due** to a **lack** of sufficient local, **state and** federal resources. **Expanding** the definition of **community development** may provide **the** resources to make **such** projects economically feasible, thereby **improving** the community for all residents.

The agencies noted the concerns of several commenters **expressing** significant **difficulty** in making **qualified** investments **due** to a lack **of viable** opportunities, **while** others **discussed** a need to simply make the investments regardless of the impact of **the investment on the community**. The agencies write:

“Some noted that **intense** competition for a limited **supply** of community development equity **investments has depressed** yields, effectively turning **many** of **the** investments **into** grants; some **claimed** that **institutions had spent** resources **transforming** would-be loans into equity investments merely to satisfy the investment test; and **some** expressed concern that **institutions** were **forced** to **worry more about making** a sufficient number and **amount** of investments **than** about the effectiveness of their **investments for their communities.**” *Federal Register*, Vol. 69, No. 25 (p. 5733)

Institutions should never **be** forced by regulation to operate in **an unsafe** or unsound **manner**; yet, it **would** seem the current definition of community development **lends itself** to **this** very result. Furthermore, the efficient deployment of capital is essential if **CRA** is **to achieve** the **public policy goals** for which it was enacted. **Regulation** must not **prevent** **nor provide** a disincentive for institutions to participate **in** opportunities that will have the greatest impact on their communities. Therefore, **we strongly** urge the **agencies** to **adopt** **an** expanded definition of the term “community development” that **maximizes the** investment test’s impact on communities nationwide.

It is important to note that **we** believe institutions must be given additional options in the implementation of the investment test. However, this flexibility should not be implemented in a manner that adds to the existing CRA burden. No institution should be

forced to involve itself in all aspects of **an expanded** list of approved community development activities. Rather, institutions should be granted the option of **participating in a broader** array of community development activities.

Incentives for exempted institutions to continue investment activities

As more **institutions** are exempted from the **large** retail exam, fewer institutions will be **examined** for significant CRA investment activities. We strongly believe the existing incentive **program** should not only be retained, but also **enhanced** to **ensure that** demands for capital **are** met in communities served by exempted **institutions**. While lending must **remain** the central criteria by which exempted **institutions are rated under CRA**, **we urge the agencies** to provide additional incentives for such institutions to continue **CRA** investment activities.

Clarify the terms "innovative and complex"

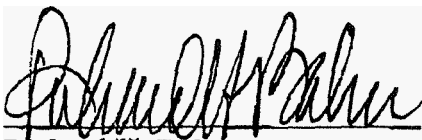
As the agencies **note**, several commenters criticized the **ambiguous** nature of **the terms** innovative and complex **as related to CRA** investment activities. **Although the** agencies considered alternatives to **the terms**, **no changes have been proposed**. Rather, the agencies have **opted** to develop additional guidance for examiners and **institutions**.

We **encourage** the **agencies** to consider **the** impact of **an** investment **an institution** makes **rather than the** complexity or uniqueness of the **transaction**. The purpose of CRA, as the agencies **note**, **was** not to force institutions to **make loans** or **investments** that will jeopardize **safety and soundness**. **Institutions** that fulfill the requirements and **spirit** of CRA through economically **sound** investments **must receive full credit** irrespective of the "innovative or complex": **characteristics** of those transactions.

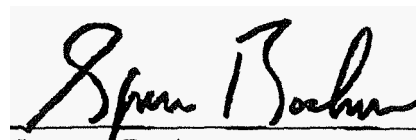
If the agencies **opt** to retain the terms **innovative and complex**, we **strongly** urge the terms be clearly defined **through** agency guidance. **Institutions** need regulatory **certainty** in **order** to comply with CRA. It is **evident from the joint notice of proposed rulemaking** that a significant number of institutions **submitted** comments regarding the **ambiguous** and subjective meaning of **these terms**. While the **agencies rightly** note that exempting a greater number of **institutions from** the investment test **will bring relief**, this offers no **relief** for **large retail institutions**. We urge the agencies to **address these concerns** to the greatest **extent** possible and provide large retail institutions **with** the necessary regulatory **certainty** to **fulfill their** obligations under **the investment test**.

We **appreciate** the effort **the** agencies have made to **update** and improve regulations implementing CRA. We urge **you** to consider **our** comments and **look forward** to **working with** you to finalize a rules **change** that is **fair** to financial institutions and that **maximizes the impact** of CRA activities in communities across the **nation**.

Sincerely,



Richard H. Baker



Spencer Bachus

Walter B. Jones
Walter Jones

Doug Ose
Doug Ose

Ed Royce
Ed Royce

Ron Paul
Ron Paul

Jeff Hensarling
Jeff Hensarling